

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Nos. C 13-5947 CW

In re:

Bk. Nos. 12-32655-HLB
12-03184-HLB

Robert Franklin Van Zandt,
Debtor.

ORDER DISMISSING APPEAL

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Debtor Robert Franklin Van Zandt has filed at least ten separate appeals challenging orders of the Bankruptcy Court. The Court previously dismissed six of those appeals, which were appeals from interlocutory orders. See Case Nos. 13-1513; 13-1888; 13-5948; 13-0797; 14-1527; and 14-1528. The Court also affirmed the decisions of the Bankruptcy Court and denied the motion to withdraw the reference in four other cases. See Case Nos. 13-0702; 13-1568; 13-2765; and 13-4200. The Court now dismisses this appeal of the Bankruptcy Court's interlocutory order denying Debtor's "motion for the court to recognize that this Chapter 7 case is closed and that adversary proceedings 12-03183 and 12-03184 are barred, nunc pro tunc, by statute."

LEGAL STANDARD

District courts have the discretion to grant leave to appeal interlocutory bankruptcy court orders and may consider a notice of appeal as a motion for leave to appeal. 28 U.S.C. § 158(3); Fed. R. Bankr. P. 8003(c). In considering whether leave should be granted, the Court will look to 28 U.S.C. § 1292(b). In re Betta

1 Prods., 2007 U.S. Dist. LEXIS 81621 at *3; In re Sperna, 173 B.R.
2 654, 658 (9th Cir. BAP 1994). Pursuant to that section, review of
3 an interlocutory order is appropriate when

4 such order involves a controlling question of law as to
5 which there is substantial ground for difference of
6 opinion and that an immediate appeal from the order may
7 materially advance the ultimate termination of the
8 litigation.

28 U.S.C. § 1292(b).

DISCUSSION

9 An order finding that a case is not closed is by definition
10 interlocutory. The Court finds that appeal of the interlocutory
11 order at issue in this appeal is not appropriate under § 1292(b).
12 Moreover, even if the Court reached the merits of the appeal, it
13 would affirm the Bankruptcy Court's decision. Federal Rule of
14 Bankruptcy Procedure 5009(a) provides that if "the trustee has
15 filed a final report and final account and has certified that the
16 estate has been fully administered, and if within 30 days no
17 objection has been filed by the United States trustee or a party
18 in interest, there shall be a presumption that the estate has been
19 fully administered." Such a presumption does not require the
20 Bankruptcy Court to close the case. Moreover, as the Bankruptcy
21 Court noted, Debtor himself filed an adversary proceeding after
22 the date on which he asserts the case should have been closed.

23 For the reasons stated above, the Court dismisses the appeal.

24 IT IS SO ORDERED.

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26 Dated: 4/14/2014

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CLAUDIA WILKEN
United States District Judge